

Talking points – Hands-UP (Brussels)

- In Portugal there are no specific data on this theme, but resorting to light to moderate corporal punishment for educational purposes is a socially accepted practice.
- However, Portugal is following all the international obligations regarding children's' rights.
- The Portuguese Constitution establishes the right of the child to protection against abusive exercise of authority within the family.

The civil legislation establishes parental responsibilities that include the power-duty of education and therefore of correction, but this is not an absolute power.

The intervention of the criminal law is seen as a last resource. Nevertheless, we have the general crime of corporal offenses, while corporal punishment is penalized in the domestic violence and mistreatment crimes.

However, the majority of the doctrine and jurisprudence accepts that parents should not be criminally accountable for the use of "light", occasional, proportional and reasonable types of corporal punishment for educational purposes, based on the parent's legal right to correction or arguing the criminal irrelevance of the conduct due to the principle of social adequacy.

On the other hand, it is important to stress out that not all forms of corporal punishment are considered acts of violence or mistreatment.

Nevertheless, this power-duty to correction through light and occasional corporal punishment is only accepted if used by parents or guardians, but never for third parties such as teachers or babysitters, for example.

It is also relevant to note that we only found 23 rulings on this subject and, of those, 91% date after the year of 2004. This topic only recently arrived to the Portuguese courts and it's due to a change of mentalities also noted in the rulings, *per se*, that increasingly restrict the use of corporal punishment for educational purposes.

- However it is still necessary to change the social mentality and also to fill some legislative gaps.

As a result of our investigation and of the discussion with the experts during the project meetings, we propose the following actions:

1) Changes to legislation

The changes aim to ratify laws and make sure that parents' responsibilities comply with the principles of positive parenting.

In the civil legislation, in the article concerning the parental responsibilities (that focus the power-duty to education), we propose to add:

“Parents ought to respect their children and should not submit them to physical punishment or humiliating practices” (stressing that there are other practices not involving physical punishment that could be humiliating and should be forbidden).

In the criminal legislation, in the domestic violence crime, which requires the existence of cohabitation between the offender and the victims, we propose to extend the criminalization to “descendants, ancestors, adopted and adopters”, even without cohabitation, in order to punish by this crime the parent who does not live with his child and is violent towards him or her, for instance, while exerting his visits rights.

We also propose to include in the list of accessory penalties, this one: “attend specific programs of positive parenting”.

On the other hand, we have the accessory penalty of prohibiting the exercise of parental responsibilities, during a certain period, determined by the judge (between one and ten years), but we haven't come up with a solution for the eventual rehabilitation of the parent before the ending of the prohibition; so we propose the introduction of the possibility to withdraw the measure by request of the convicted parent (as is it possible in the safety measures).

The crime of ill-treatment is thought to be applied in institutional context (for example, children that are mistreated in the institution where they live), but it does not establish accessory penalties; this is quite peculiar, since both crimes depend on the existence of specific types of relationships between the offender and the victim. So we propose to extend the application of the accessory penalties to this crime as well (namely restraining orders for the offender and mandatory participation in social rehabilitation programs).

We also propose:

- 2) **The improvement of the monitoring of parents and other caregivers and the monitoring of families**, by multidisciplinary teams specialized in the field of pediatrics/childhood and by promoting CAFAP's capacity-building (these are specialized services for families, children and teenager). So we propose to promote training actions on positive parenting, provided by CAFAPs and also by health care centers and maternity hospitals
- 3) The improvement and broadening of child and adolescent (until 18 years) **psychiatry services** in healthcare units.
- 4) **Changes in schools/in educational system such as**: the inclusion of children's rights in their *curricula*, also developing activities that promote mutual respect; promotion of children's and adolescent's participation, expressing their opinions; creation of multidisciplinary teams in every school (with social workers and psychologists to support children and their families)
- 5) The establishment of **children-friendly spaces** in healthcare centers and schools, where they can anonymously talk about their problems;
- 6) The **mandatory professional accreditation** of people who work with children and adolescent, as working with vulnerable groups requires certain skills and training: so we propose to promote training actions, namely, on positive discipline and methods of conflict management.
- 7) It is also important to promote **training of key-actors**, such as police forces, caregivers and parents - about children's rights and corporal punishment
- 8) The improvement of the **cooperation between institutions** and governmental entities, creating work-groups to promote positive discipline.
- 9) The promotion of a **nationwide campaign** to the elimination of corporal punishment, divided in three: one aimed at the general audience, another to parents and caregivers; and another for children; and also the development of a **website** disseminating the message to ban corporal punishment, with a section to parents and caregivers dedicated to positive parenting. The development of awareness-raising actions for specific target groups is also important.
- 10) The **compilation** of all practices and training actions on positive parenting in Portugal, available in the social security website and other institutions;
- 11) The promotion of **research** on this theme, namely through national and international conferences;
- 12) We suggest the **development of a longitudinal research** after the implementation of the Action Plan, to analyse the social evolution; it would be important to carry out surveys every two years to evaluate the implementation of this Plan.